

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Genevieve Lamont	Team: Squad #8	CCRB Case #: 201903527	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 04/24/2019 4:30 PM	Location of Incident: § 87(2)(b)	Precinct: 77	18 Mo. SOL 10/24/2020	EO SOL 6/10/2021	
Date/Time CV Reported Wed, 04/24/2019 5:53 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Wed, 04/24/2019 5:53 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Michael Napolitano	05521	958971	077 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Matthew Melendez	18332	955179	077 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Michael Napolitano	Discourtesy: Police Officer Michael Napolitano spoke discourteously to § 87(2)(b)	§ 87(2)(b)
B.POM Michael Napolitano	Abuse: Police Officer Michael Napolitano threatened to arrest § 87(2)(b)	§ 87(2)(b)
C.POM Michael Napolitano	Abuse: Police Officer Michael Napolitano entered § 87(2)(b) in Brooklyn.	§ 87(2)(b)
D.POM Michael Napolitano	Abuse: Police Officer Michael Napolitano seized § 87(2)(b) property.	§ 87(2)(b)

### Case Summary

On April 24, 2019, § 87(2)(b) filed the following complaint with the CCRB by phone.

On April 24, 2019, at approximately 4:30 p.m., § 87(2)(b) was playing music from a speaker in his garage, located at § 87(2)(b) in Brooklyn. Two officers, PO Michael Napolitano and PO Matthew Melendez, both from the 77<sup>th</sup> Precinct, arrived in front of § 87(2)(b)'s residence. PO Napolitano informed § 87(2)(b) that his music was too loud and that he was seizing the speaker. § 87(2)(b) and PO Napolitano walked to the garage, where they had a back and forth conversation regarding § 87(2)(b) being frequently warned for unreasonable noise. During this conversation, PO Napolitano told § 87(2)(b) “don’t give me that shit” when § 87(2)(b) protested the seizure of his speaker (**Allegation A: Discourtesy; § 87(2)(g)**). § 87(2)(b) told PO Napolitano that he would turn on his other speakers once they left, to which PO Napolitano responded, “I’ll collar you bro, I don’t give a fuck. You know me, I don’t give a shit” (**Allegation A cont.: Discourtesy; § 87(2)(g) and Allegation B: Abuse of Authority; § 87(2)(g)**). PO Napolitano then entered the garage and took the speaker (**Allegation C and D: Abuse of Authority; § 87(2)(g)**). PO Melendez issued § 87(2)(b) two summonses for unreasonable noise and blocking pedestrian traffic [BR01 and BR02, respectively].

§ 87(2)(b) provided the investigation with security camera footage of § 87(2)(b) [BR03]. Body-worn camera footage (BWC) from PO Napolitano and PO Melendez was also provided to the investigation [BR04 and BR05, respectively].

### Findings and Recommendations

#### **Allegation (A) Discourtesy: Police Officer Michael Napolitano spoke discourteously to**

§ 87(2)(b)

#### **Allegation (B) Abuse of Authority: Police Officer Michael Napolitano threatened to arrest**

§ 87(2)(b)

It is undisputed that while discussing the seizure of § 87(2)(b)'s speaker, PO Napolitano used discourteous language and threatened to arrest § 87(2)(b).

§ 87(2)(b) did not allege that PO Napolitano threatened to arrest him or spoke discourteously towards him while discussing the seizure of the speaker [BR06]. At 00:50 minutes, PO Napolitano’s BWC showed the officer using the phrase “that shit” when § 87(2)(b) protested his speaker being taken [BR04]. At 04:50 minutes, § 87(2)(b) told PO Napolitano that he will turn his other speakers on once the officers leave, to which PO Napolitano responded, “I’ll collar you bro, I don’t give a fuck. You know me, I don’t give a shit” [BR04].

PO Napolitano acknowledged using discourteous language towards § 87(2)(b) during the incident [BR07]. He stated that there was no reason why he used discourteous language, joking that it was because he was Italian. He also acknowledged informing § 87(2)(b) that he would arrest him if he turned his speaker back on. PO Napolitano stated that § 87(2)(b) could have been arrested for disorderly conduct and failure to comply with a lawful order if he had continued to play his music at an unreasonable volume. PO Melendez’s testimony was primarily consistent with PO Napolitano’s [BR08]. He heard PO Napolitano use the word “shit” towards § 87(2)(b) but did not hear any other discourteous language. He did not hear PO Napolitano threaten to arrest § 87(2)(b) but stated that he could have been arrested for disorderly conduct.

Patrol Guide Procedure 203-09 states the members of service must interact with members of the public in a professional and courteous manner [BR09].

In DCT-DAO Case #201-17276, it was ruled by the Honorable Paul Gamble, the Assistant Deputy Commissioner of Trials, that language which would ordinarily be inappropriate in dealing with civilians may be excused in the course of a violent confrontation [BR10].

As per NY CLS Penal §240.20, a person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance, or alarm, he makes unreasonable noise [BR11].

§ 87(2)(g)

§ 87(2)(g)

**Allegation (C) Abuse of Authority: Police Officer Michael Napolitano entered § 87(2)(b) in Brooklyn.**

**Allegation (D) Abuse of Authority: Police Officer Michael Napolitano seized § 87(2)(b) property.**

It is undisputed that PO Napolitano entered § 87(2)(b)'s garage, which is private property, § 87(2)(g) and seized § 87(2)(b)'s speaker.

§ 87(2)(b) testified that neither PO Napolitano nor PO Melendez warned § 87(2)(b) to turn down the speaker when they first arrived [BR06]. He offered to turn down the music, but PO Napolitano informed him that he was taking it. PO Napolitano then entered his garage and ordered § 87(2)(b) to unplug the speaker, which he did. § 87(2)(b) did not consent to PO Napolitano entering his garage, nor did PO Napolitano request it. PO Napolitano then took the speaker and placed it in the back of the police vehicle. Footage from § 87(2)(b)'s security cameras showed PO Napolitano entering the garage at 10:03 minutes and exiting with § 87(2)(b)'s speaker [BR03].

PO Napolitano testified that he did not warn § 87(2)(b) to turn down the speaker's volume prior to deciding to seize it [BR07]. He explained that, as per procedure regarding noise complaints, if he felt that he could not correct the condition, then enforcement action could be taken. He added that § 87(2)(b)'s intoxication was another element that allowed enforcement action. PO Napolitano stated that he reached into the garage to seize the speaker, but did not recall if he stepped foot into the garage. He stated there was no expectation of privacy regarding the garage, as the door was wide open and an individual continually walked in and out. He did not know if this individual was known to § 87(2)(b). PO Melendez was mostly consistent with PO Napolitano's testimony, but did not recall if he or PO Napolitano seized the speaker [BR08]. He also stated that there were continuous noise complaints regarding § 87(2)(b) and provided the investigation with a log of 311 complaints [BR12].

BWC footage from PO Napolitano showed the officer at 03:35 minutes breaking the threshold of § 87(2)(b)'s garage and seizing the speaker [BR04]. § 87(2)(b) did not provide his consent, and PO Napolitano did not ask for it.

According to Patrol Guide Procedure 214-23, once noise is determined as unreasonable, the officer should attempt to correct the condition by warning the violator. If the officer is unable to correct the condition, a summons is to be served and the sound reproduction is to be seized. A uniform member of service may legally seize a sound reproduction device from a private home if the uniformed member is invited inside and sees the device responsible for the noise. The decision to forcibly enter into private or semi-private premises to correct noise complaints will only be made by a precinct commander/duty captain and only as a last resort, after requests to stop the noise have been ignored [BR13].

§ 87(2)(g)

#### Civilian and Officer CCRB Histories

- § 87(2)(b) has been party to four prior CCRB complaints [BR14].
- PO Napolitano has been a member of service for four years. § 87(2)(b), § 87(2)(g)

§ 87(2)(g)

#### Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- On July 27, 2019, a FOIL request was sent to the New York City Office of the Comptroller to determine if a Notice of Claim was filed regarding this complaint. The results will be forwarded upon receipt [BR15].
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date